

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 130

SENATORS TRUMP, IHLENFELD, AND FACEMIRE, *original*

sponsors

[Originating in the Committee on the Judiciary;

reported on February 18, 2020]

1 A BILL to amend and reenact §17C-5-2, §17C-5-2a, §17C-5-2b, §17C-5-4, §17C-5-7, and
2 §17C-5-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding
3 thereto a new section, designated §17C-5-7a; to amend and reenact §17C-5A-1,
4 §17C-5A-1a, and §17C-5A-3 of said code; to amend said code by adding thereto a new
5 section, designated §17C-5A-2b; and to amend said code by adding thereto a new
6 section, designated §17C-5C-1a, all relating generally to the procedures for revocation or
7 suspension of a person's license to operate a motor vehicle for offenses involving driving
8 under the influence of alcohol, controlled substances, or drugs; defining terms; transferring
9 authority for hearing certain matters related to revocations or suspensions of licenses from
10 the Office of Administrative Hearings to the courts; establishing mandatory license
11 revocation or suspension periods for individuals convicted of certain offenses; authorizing
12 alternate revocation or suspension periods conditioned upon participation in Motor Vehicle
13 Alcohol Test and Lock Program for certain offenses; establishing mandatory license
14 revocation or suspension periods for individuals upon second and subsequent convictions
15 for certain offenses; clarifying what constitutes a second or subsequent offense for
16 purposes of criminal penalties and license revocations and suspensions; clarifying that
17 certain offenses involving driving under the influence take place only when the operator is
18 upon a public highway or private road; clarifying the term "in this state" for purposes of
19 enforcement of certain serious traffic crimes; requiring the Commissioner of the Division
20 of Motor Vehicles to revoke a person's license upon conviction of certain offenses or for
21 refusal to submit to a secondary chemical test in certain circumstances; requiring
22 individuals whose licenses have been revoked or suspended upon conviction of certain
23 offenses to complete the comprehensive safety and treatment program before the license
24 can be reinstated; requiring driver consent to participation in Motor Vehicle Alcohol Test
25 and Lock Program; requiring deferral program for certain first offenses to be completed

26 within one year; prohibiting a secondary test of blood without consent absent issuance of
27 a search warrant; requiring that a person arrested for driving under the influence be
28 provided with certain verbal and written warnings prior to submitting to a secondary
29 chemical test; requiring an officer to 15 minutes before a refusal to submit to a secondary
30 chemical test is considered final; requiring that, following an individual's refusal to submit
31 to a secondary chemical test, an arresting officer submit a sworn statement containing
32 certain information to Commissioner of the Division of Motor Vehicles and the court;
33 providing for a hearing before the court to contest a documented refusal to submit to a
34 secondary chemical test; providing minimum license revocation periods for refusal to
35 submit to a secondary chemical test; directing the Bureau for Public Health to make reports
36 and recommendations on the levels of drugs and controlled substances to be used as
37 evidence in certain criminal proceedings; limiting the administrative jurisdiction of Division
38 of Motor Vehicles and Office of Administrative Hearings to offenses occurring on or before
39 June 30, 2020; eliminating all statutory provisions authorizing or requiring the
40 Commissioner of the Division of Motor Vehicles to take administrative action upon an
41 individual's license on the basis of driving under the influence or refusal to submit to a
42 secondary test absent direction from court; requiring the Commissioner of the Division of
43 Motor Vehicles to provide certain records to the court following a person's arrest; providing
44 a procedure to correct a license revocation or suspension based on mistaken driver
45 identity; providing that a plea of no contest constitutes a conviction; requiring the clerk of
46 the court to transmit a copy of an order related to revoking or suspending a person's
47 license to the Division of Motor Vehicles; directing that a copy of a license revocation or
48 suspension order to be sent to the person whose license is being revoked or suspended
49 by certified mail; providing that revocation for refusal to submit to secondary chemical test
50 run concurrently with other revocation or suspension imposed as a result of an offense

51 that led to the arrest; making persons convicted of driving under the influence eligible for
52 participation in comprehensive safety and treatment program and related reductions in
53 length of revocation for successful completion thereof; requiring the Office of
54 Administrative Hearings to dispose of all matters pending before it by a certain date;
55 establishing a timeline for jurisdiction of matters currently filed in the Office of
56 Administrative Hearings to transfer to the courts; requiring that matters related to license
57 suspension or revocation for driving under the influence, pending before the Office of
58 Administrative Hearings on its termination, be dismissed; requiring that matters not related
59 to license suspension or revocation for driving under the influence, pending before the
60 Office of Administrative Hearings on its termination, be transferred to a circuit court
61 according to certain procedures; terminating the Office of Administrative Hearings by a
62 certain date; eliminating obsolete language; providing internal effective dates; and making
63 technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances, or drugs; penalties.

1 (a) *Definitions.* —

2 (1) “Impaired state” means a person:

3 (A) Is under the influence of alcohol;

4 (B) Is under the influence of any controlled substance;

5 (C) Is under the influence of any other drug or inhalant substance;

6 (D) Is under the combined influence of alcohol and any controlled substance or any other
7 drug; or

8 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or
9 more, by weight.

10 (2) "Bodily injury" means injury that causes substantial physical pain, illness, or any
11 impairment of physical condition.

12 (3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

13 ~~(3)~~ (4) "Serious bodily injury" means bodily injury that creates a substantial risk of death,
14 that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged
15 loss or impairment of the function of any bodily organ.

16 (5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established
17 in §17C-5A-3a and administered by the Division of Motor Vehicles.

18 (b) Any person who drives a vehicle in this state while he or she is in an impaired state,
19 and such impaired state proximately causes the death of any person, is guilty of a felony and,
20 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three
21 nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall
22 have his or her license to operate a motor vehicle revoked by the Commissioner of the Division
23 of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in
24 the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That any death
25 charged under this subsection must occur within one year of the offense: *Provided, however*, That
26 if the person has previously been convicted under this section, the person shall have his or her
27 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
28 for life or for a period of time conditioned on participation in the test and lock program in
29 accordance with §17C-5A-3a of this code.

30 (c) Any person who drives a vehicle in this state while he or she is in an impaired state,
31 and such impaired state proximately causes serious bodily injury to any person other than himself
32 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
33 correctional facility for not less than two nor more than 10 years and shall be fined not less than
34 \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked

35 by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of
36 time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of
37 this code: *Provided*, That if the person has previously been convicted under this section, the
38 person shall have his or her license to operate a motor vehicle revoked by the Commissioner of
39 the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test
40 and lock program in accordance with §17C-5A-3a of this code.

41 (d) Any person who drives a vehicle in this state while he or she is in an impaired state,
42 and such impaired state proximately causes a bodily injury to any person other than himself or
43 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
44 less than one day nor more than one year and shall be fined not less than \$200 nor more than
45 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
46 of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on
47 participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*,
48 That if the person has previously been convicted under this section, the person shall have his or
49 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
50 Vehicles for life or for a period of time conditioned on participation in the test and lock program in
51 accordance with §17C-5A-3a of this code. *Provided*, That such Any jail term imposed pursuant to
52 this subsection shall include actual confinement of not less than 24 hours: *Provided, however*,
53 That a person sentenced pursuant to this subsection shall receive credit for any period of actual
54 confinement he or she served upon arrest for the subject offense.

55 (e) Any person who drives a vehicle on any public highway or private road in this state: (i)
56 (1) while he or she is in an impaired state; or (ii) (2) while he or she is in an impaired state but has
57 an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by
58 weight, is guilty of a misdemeanor and, upon conviction thereof, shall ~~shall~~ may be confined in jail for
59 up to six months and shall be fined not less than \$100 nor more than \$500, and shall have his or

60 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
61 Vehicles for a period of six months or for a period of time conditioned on participation in the test
62 and lock program in accordance with §17C-5A-3a of this code: *Provided*, That a person sentenced
63 pursuant to this subsection shall receive credit for any period of actual confinement he or she
64 served upon arrest for the subject offense.

65 (f) Any person who drives a vehicle on any public highway or private road in this state
66 while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one
67 percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be
68 confined in jail for not less than two days nor more than six months, which jail term is to include
69 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than
70 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
71 of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on
72 participation in the test and lock program in accordance with §17C-5A-3a of this code. A person
73 sentenced pursuant to this ~~subdivision~~ subsection shall receive credit for any period of actual
74 confinement he or she served upon arrest for the subject offense.

75 (g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any
76 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of
77 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day
78 nor more than six months, which jail term is to include actual confinement of not less than 24
79 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license
80 to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
81 period of six months. A person sentenced pursuant to this ~~subdivision~~ subsection shall receive
82 credit for any period of actual confinement he or she served upon arrest for the subject offense.

83 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway
84 or private road in this state by any other person who is in an impaired state is guilty of a

85 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months
86 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to
87 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
88 period of six months or for a period of time conditioned on participation in the test and lock
89 program in accordance with §17C-5A-3a of this code.

90 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway
91 or private road in this state by any other person who is a habitual user of narcotic drugs or
92 amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof,
93 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor
94 more than \$500, and shall have his or her license to operate a motor vehicle revoked by the
95 Commissioner of the Division of Motor Vehicles for a period of six months.

96 (j) (1) Any person under the age of 21 years who drives a vehicle on any public highway
97 or private road in this state while he or she has an alcohol concentration in his or her blood of two
98 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
99 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction
100 thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate
101 a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of
102 60 days or for a period of time conditioned on participation in the test and lock program in
103 accordance with §17C-5A-3a of this code. For a second or subsequent offense under this
104 subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined
105 in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his
106 or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
107 Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer,
108 or for a period of time conditioned on participation in the test and lock program in accordance with
109 §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this

110 subsection may move for a continuance of the proceedings, from time to time, to allow the person
111 to participate in the ~~Motor Vehicle Alcohol~~ test and lock program as provided in §17C-5A-3a of
112 this code. Upon successful completion of the program, the court shall dismiss the charge against
113 the person and expunge the person's record as it relates to the alleged offense. In the event the
114 person fails to successfully complete the program, the court shall proceed to an adjudication of
115 the alleged offense. A motion for a continuance under this subsection may not be construed as
116 an admission or be used as evidence.

117 (2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her
118 license to operate a motor vehicle suspended or revoked for a minimum period of one year or for
119 a period of time conditioned on participation in the test and lock program in accordance with
120 §17C-5A-3a of this code, if the person:

121 (i) Has previously been convicted under this subsection and is subsequently convicted of
122 an offense under another subsection of this section; or

123 (ii) Is convicted under this subsection and has previously been convicted of an offense
124 under another subsection of this section.

125 (B) Nothing in this subdivision permits a shorter period of license revocation, license
126 suspension, or participation in the test and lock program than is mandatory for the specific offense
127 for which the person is convicted.

128 (3) A person arrested and charged with an offense under the provisions of this subsection
129 or subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section may not also be charged with an
130 offense under this subsection arising out of the same transaction or occurrence.

131 (k) Any person who drives a vehicle on any public highway or private road in this state
132 while he or she is in an impaired state and has within the vehicle one or more other persons who
133 are unemancipated minors who have not yet reached their 16th birthday is guilty of a
134 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor

135 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have
136 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
137 Vehicles for a period of one year or for a period of time conditioned on participation in the test and
138 lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall
139 include actual confinement of not less than 48 hours: *Provided, however*, That a person
140 sentenced pursuant to this ~~subdivision~~ subsection shall receive credit for any period of actual
141 confinement he or she served upon arrest for the subject offense.

142 (l) A person ~~violating any provision of subsection (d), (e), (f), (g), (h), or (j) of~~ convicted of
143 an offense under this section, for the second offense who has previously been convicted of any
144 offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction
145 thereof, shall be confined in jail for not less than six months nor more than one year, ~~and the court~~
146 ~~may, in its discretion, impose a fine of~~ may be fined not less than \$1,000 nor more than \$3,000,
147 and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the
148 Division of Motor Vehicles for 10 years or for a period of time conditioned on participation in the
149 test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the second
150 conviction is for an offense as described in subsections (b), (c), or (d) of this section and the
151 subsection creating the offense requires a period of incarceration, period of license revocation, or
152 fine that is greater than what is required for a conviction under this subsection, the greater period
153 of incarceration, period of revocation, or fine shall be imposed: *Provided, however*, That this
154 section does not apply to a second conviction that is subject to a period of license revocation
155 under subsection (j) of this section.

156 (m) A person ~~violating any provision of subsection (d), (e), (f), (g), (h), or (j) of~~ convicted
157 of an offense under this section, for the third or any subsequent offense under this section who
158 has previously been convicted of any offense under this section on two or more occasions, is
159 guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility

160 for not less than two nor more than five years, shall have his or her license to operate a motor
161 vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of
162 time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of
163 this code, and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than
164 \$5,000: Provided, That if the third or subsequent conviction is for an offense as described in
165 subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period
166 of incarceration, period of license revocation, or fine that is greater than what is required for a
167 conviction under this subsection, the greater period of incarceration, period of revocation, and fine
168 shall be imposed: Provided, however, That this section does not apply to a third or subsequent
169 conviction that is subject to a period of license revocation under subsection (j) of this section.

170 (n) For purposes of subsections (l) and (m) of this section relating to second, third, and
171 subsequent offenses, the following events shall be regarded as offenses and convictions under
172 this section:

173 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), ~~or~~ (h), or (i)
174 of this section, or under a prior enactment of this section, for an offense which occurred within the
175 10-year period immediately preceding the date of arrest in the current proceeding;

176 (2) Any conviction under a municipal ordinance of this state or any other state or a statute
177 of the United States or of any other state of an offense which has the same elements as an offense
178 described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred
179 within the 10-year period immediately preceding the date of arrest in the current proceeding; and

180 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for
181 violation of subsection (e) of this section, which violation occurred within the 10-year period
182 immediately preceding the date of arrest in the current proceeding.

183 (o) A person may be charged in a warrant, ~~or~~ indictment, or information for a second or
184 subsequent offense, ~~under this section~~ as described in subsection (j), (l), or (m) of this section, if

185 the person has been previously arrested for, or charged with, a violation of this section which is
186 alleged to have occurred within the applicable time period for prior offenses, notwithstanding the
187 fact that there has not been a final adjudication of the charges for the alleged previous offense.
188 In that case, the warrant or indictment or information must set forth the date, location, and
189 particulars of the previous offense or offenses. No person may be convicted of a second or
190 subsequent offense under this section unless the conviction for the previous offense has become
191 final, or the person has previously had a period of conditional probation imposed pursuant to
192 §17C-5-2b of this code.

193 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or
194 (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this
195 section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not
196 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i)
197 of this section.

198 ~~(q) For purposes of this section, the term “controlled substance” has the meaning ascribed~~
199 ~~to it in §60A-1-101 et seq. of this code.~~

200 ~~(†)~~ (q) The sentences provided in this section upon conviction for a violation of this article
201 are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
202 the provisions of §62-11A-1 et seq. of this code to a person sentenced or committed to a term of
203 one year or less for a first offense under this section: *Provided, however*, That the court may
204 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated
205 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 et
206 seq. of this code may be used as an alternative sentence to any period of incarceration required
207 by this section for a first or subsequent offense: *Provided further*, That for any period of home
208 incarceration ordered for a person convicted of a second offense under this section, electronic
209 monitoring shall be required for no fewer than five days of the total period of home confinement

210 ordered and the offender may not leave home for those five days notwithstanding the provisions
211 of §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered
212 for a person convicted of a third or subsequent violation of this section, electronic monitoring shall
213 be included for no fewer than 10 days of the total period of home confinement ordered and the
214 offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

215 ~~(s) As used in subsections (e), (f), (g), (h), (i), and (j) of this section, the words “drives a~~
216 ~~vehicle in this state” do not mean or include driving or operating a vehicle solely and exclusively~~
217 ~~on one’s own property.~~

218 (r) A person whose license to operate a motor vehicle has been revoked or suspended by
219 the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a
220 comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or
221 her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

222 (s) For any offense for which an alternative revocation period is permitted conditioned
223 upon participation in the test and lock program, an alternative sentence may not be imposed
224 without the consent of the driver.

225 (t) Upon entering the order of conviction for an offense under this section, or the imposition
226 of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall
227 immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

228 (u) The amendments made to this section during the 2020 regular session of the
229 Legislature shall become effective on July 1, 2020.

**§17C-5-2a. Definition of phrase “in this state”; phrases synonymous with driving under the
influence of alcohol; validation of warrants and indictments.**

1 (a) For purposes of this article and §17C-5A-1 *et seq.* of this code, the phrase “in this
2 state” shall mean anywhere within the physical boundaries of this state, including, but not limited
3 to, publicly maintained streets and highways, and subdivision streets or other areas not publicly

4 maintained but nonetheless open to the use of the public for purposes of vehicular travel, but as
5 used in §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h), §17C-5-2(i), and §17C-5-2(j) of this
6 code, the term does not mean or include driving or operating a vehicle solely and exclusively on
7 one's own property in an area not open to the use of the public for purposes of vehicular travel.

8 (b) When used in this code, the terms or phrases “driving under the influence of
9 intoxicating liquor”, “driving or operating a motor vehicle while intoxicated”, “for any person who
10 is under the influence of intoxicating liquor to drive any vehicle”, or any similar term or phrase
11 shall be construed to mean and be synonymous with the term or phrase “while under the influence
12 of alcohol ... drives a vehicle” as the latter term or phrase is used in §17C-5-2 of this code.

13 (c) From and after the effective date of this section, a warrant or indictment which charges
14 or alleges an offense, prohibited by §17C-5-2 of this code, and which warrant or indictment uses
15 any of the terms or phrases set forth in subsection (b) of this section, shall not thereby be fatally
16 defective if such warrant or indictment otherwise informs the person so accused of the charges
17 against ~~him~~ said person.

§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.

1 (a) (1) Except as provided in subsection ~~(g)~~ (f) of this section, the court, without entering
2 a judgment of guilt and with the consent of the accused, shall defer further proceedings and
3 impose probation, when:

4 (A) The person pleads to or is found guilty of the offense defined in §17C-5-2(e) of this
5 code;

6 (B) ~~whenever any~~ The person who has not previously been convicted of any offense under
7 this article or under any statute of the United States or of any state relating to driving under the
8 influence of alcohol, any controlled substance, or any other drug; and

9 ~~(4) (C) The person~~ notifies the court within 30 days of his or her arrest of his or her intention
10 to participate in a deferral pursuant to this section. ~~and~~

11 ~~(2) pleads guilty to or is found guilty of driving under the influence of alcohol under~~
12 ~~§17C-5-2(e) of this code~~

13 (2) If all the requirements in subdivision (1) of this subsection are met, the court, without
14 entering a judgment of guilt, ~~and with the consent of the accused~~ shall defer further proceedings
15 and ~~notwithstanding any provisions of this code to the contrary~~ place him or her the person on
16 probation, the conditions of which conditions shall include that he or she successfully completes
17 the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code.
18 Participation therein shall be for a period of at least 165 days ~~after he or she has served the 15~~
19 ~~days of license suspension imposed pursuant to in §17C-5A-2 of this code~~ after a 15-day
20 suspension of his or her license to operate a motor vehicle and shall be completed within one
21 year thereafter.

22 ~~(b) A defendant's election to participate in deferral under this section shall constitute a~~
23 ~~waiver of his or her right to an administrative hearing as provided in section two, article five-a of~~
24 ~~this chapter~~

25 ~~(e) (b)~~ (1) If the prosecuting attorney files a motion alleging that the defendant during the
26 period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the
27 Division of Motor Vehicles, or has failed to successfully complete the program before making a
28 motion for dismissal pursuant to subsection ~~(e)~~ (c) of this section, the court may issue such
29 process as is necessary to bring the defendant before the court.

30 (2) A motion alleging ~~such a~~ a violation filed pursuant in subdivision (1) of this subsection
31 must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed
32 thereafter, must be filed within a reasonable time after the alleged violation was committed.

33 (3) When the defendant is brought before the court, the court shall afford the defendant

34 an opportunity to be heard. If the court finds that the defendant has been rightfully removed from
35 the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court
36 may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication
37 of guilt and proceed as otherwise provided.

38 (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol
39 Test and Lock Program, the defendant waives the appropriate statute of limitations and the
40 defendant's right to a speedy trial under any applicable federal or state constitutional provisions,
41 statutes, or rules of court during the period of enrollment in the program.

42 ~~(d)~~ (c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol
43 Test and Lock Program and complied with its conditions, the defendant may move the court for
44 an order dismissing the charges. This motion shall be supported by affidavit of the defendant and
45 by certification of the Division of Motor Vehicles that the defendant has successfully completed
46 the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the
47 prosecuting attorney who shall within 30 days after service advise the judge of any objections to
48 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If
49 there are no objections filed within the 30-day period, the court shall thereafter dismiss the
50 charges against the defendant. If there are objections filed with regard to the dismissal of charges,
51 the court shall proceed as set forth in subsection ~~(e)~~ (b) of this section.

52 ~~(e)~~ (d) Except as provided herein, unless a defendant adjudicated pursuant to this
53 subsection ~~be~~ is convicted of a subsequent violation of this article, discharge and dismissal under
54 this section shall be without adjudication of guilt and is not a conviction for purposes of
55 disqualifications or disabilities imposed by law upon conviction of a crime, except for those
56 provided in §17C-5A-1 *et seq.* of this code. Except as provided in ~~§17C-5-2(k) through~~
57 ~~§17C-5-2(n)~~ §17C-5-2 of this code regarding subsequent offenses, the effect of the dismissal and
58 discharge shall be to restore the person in contemplation of law to the status he or she occupied

59 prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall
60 be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by
61 reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any
62 inquiry made of him or her for any purpose other than any inquiry made in connection with any
63 subsequent offense as ~~that term is defined~~ provided in ~~§17C-5-2(n)~~ §17C-5-2 of this code.

64 (f) ~~(e)~~ There may be only one discharge and dismissal under this section with respect to
65 any person.

66 ~~(g)~~ (f) No person shall be eligible for dismissal and discharge under this section: (1) In any
67 prosecution in which any violation of any other provision of this article has been charged; (2) if
68 the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the
69 person has previously had his or her ~~driver's license~~ to operate a motor vehicle revoked ~~under~~
70 ~~§17C-5-2a of this code or under any statute of the United States or of any state relating to driving~~
71 ~~under the influence of alcohol, any controlled substance, or any other drug~~ for any offense under
72 a municipal ordinance of this state or any other state or a statute of the United States or of any
73 other state which has the same elements as an offense described in this article; or (4) if a court
74 entered an order finding that the person refused the secondary chemical test ~~pursuant to~~
75 ~~§17C-5-7~~ pursuant to §17C-5-7a of this code.

76 ~~(h)~~ (g) (1) After a period of not less than one year, which shall begin to run immediately
77 upon the expiration of a term of probation imposed upon any person under this section, the person
78 may apply to the court for an order to expunge ~~from~~ all official records ~~all recordings~~ of his or
79 her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division
80 of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may
81 not make a motion for expungement pursuant to this section.

82 (2) If the prosecuting attorney objects to the expungement, the objections shall be filed
83 with the court within 30 days after service of a motion for expungement, and copies of the

84 objections shall be served on the defendant or the defendant's attorney.

85 (3) If the objections are filed, the court shall hold a hearing on the objections, affording all
86 parties an opportunity to be heard. If the court determines after a hearing that the person during
87 the period of his or her probation and during the period of time prior to his or her application to
88 the court under this subsection has not been guilty of any serious or repeated violation of the
89 conditions of his or her probation, it shall order the expungement.

90 (i) ~~(h) Notwithstanding any provision of this code to the contrary, any A~~ person prosecuted
91 ~~for a violation of~~ an offense under §17C-5-2(e) of this code, whose case is disposed of pursuant
92 to the provisions of this section, ~~shall be liable for any~~ shall be required to pay the amount of court
93 ~~costs assessable~~ that could be assessed against a person convicted of ~~a violation of §17C-5-2(k)~~
94 ~~of this code~~ the offense. Payment of such costs may be made a condition of probation. The costs
95 assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed
96 as other court costs in accordance with §50-3-2 of this code; §14-2A-4 of this code; §30-29-4 of
97 this code; and §62-5-2, §62-5-7, and §62-5-10 of this code.

98 (i) The amendments made to this section during the 2020 regular session of the
99 Legislature shall become effective on July 1, 2020.

**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer;
designation of type of test; definition of "law-enforcement officer".**

1 (a) Any person who drives a motor vehicle in this state is considered to have given his or
2 her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary
3 chemical test of either his or her blood or breath to determine the alcohol concentration in his or
4 her blood, or the concentration in the person's body of a controlled substance, drug, or any
5 combination thereof.

6 (b) A preliminary breath analysis may be administered in accordance with the provisions
7 of §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a

8 person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a
9 municipality of this state which has the same elements as an offense described in §17C-5-2 of
10 this code.

11 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be
12 administered at the direction of the arresting law-enforcement officer having probable cause to
13 believe the person has committed an offense prohibited by §17C-5-2 of this code or by an
14 ordinance of a municipality of this state which has the same elements as an offense described in
15 said section: Provided, That absent written consent of the person, a secondary test of blood may
16 not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

17 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall
18 designate the secondary tests to be administered. Notwithstanding ~~the §17C-5-7~~ §17C-5-7a of
19 this code, the refusal to submit to a blood test only may not result in the revocation of the arrested
20 person's license to operate a motor vehicle in this state.

21 (e) Any person to whom a preliminary breath test is administered who is arrested shall be
22 advised verbally and given a written statement advising him or her that his or her refusal to submit
23 to the secondary chemical test pursuant to subsection (d) of this section will result in the
24 revocation of his or her license to operate a motor vehicle in this state for a period of at least
25 forty-five days and up to life of the following:

26 (1) That the person's refusal to submit to the secondary chemical test, designated
27 pursuant to subsection (d) of this section, will result in the revocation of his or her license to
28 operate a motor vehicle for a period of at least 45 days and up to life;

29 (2) That, if a designated secondary chemical test is taken, the results of the test may be
30 used against him or her in court as evidence of violating §17C-5-2 of this code or an ordinance of
31 a municipality of this state which has the same elements as an offense described in said section;
32 and

33 (3) That, if the person first submits to the requested secondary chemical test, the person
34 has the right to have a test or tests of his or her blood performed as provided in §17C-5-9 of this
35 code.

36 (f) Any law-enforcement officer who has been properly trained in the administration of any
37 secondary chemical test authorized by this article, including, but not limited to, certification by the
38 Bureau for Public Health in the operation of any equipment required for the collection and analysis
39 of a breath sample, may conduct the test at any location in the county wherein the arrest is made:
40 *Provided, That* the law-enforcement officer may conduct the test at the nearest available properly
41 functioning secondary chemical testing device located outside the county in which the arrest was
42 made, if: ~~(i)~~ (1) There is no properly functioning secondary chemical testing device located within
43 the county the arrest was made; or ~~(ii)~~ (2) there is no magistrate available within the county the
44 arrest was made for the arraignment of the person arrested. A law-enforcement officer who is
45 directing that a secondary chemical test be conducted has the authority to transport the person
46 arrested to where the secondary chemical testing device is located.

47 (g) If the arresting officer lacks proper training in the administration of a secondary
48 chemical test, then any other law-enforcement officer who has received training in the
49 administration of the secondary chemical test to be administered may, upon the request of the
50 arresting law-enforcement officer and in his or her presence, conduct the secondary test. The
51 results of a test conducted pursuant to this subsection may be used in evidence to the same
52 extent and in the same manner as if the test had been conducted by the arresting law-enforcement
53 officer.

54 (h) Only the person actually administering or conducting a test conducted pursuant to this
55 article is competent to testify as to the results and the veracity of the test.

56 ~~(i)~~ (i) (1) For the purpose of this article, the term “law-enforcement officer” or “police officer”
57 means: (A) Any member of the West Virginia State Police; (B) any sheriff and any deputy sheriff

58 of any county; (C) any member of a police department in any municipality as defined in §8-1-2 of
59 this code; (D) any Natural Resources police officer of the Division of Natural Resources; and (E)
60 any special police officer appointed by the Governor pursuant to the provisions of §61-3-41 of this
61 code who has completed the course of instruction at a law-enforcement training academy as
62 provided for under the provisions of §30-29-9 of this code.

63 (2) In addition to standards promulgated by the Governor's Committee on Crime,
64 Delinquency, and Correction, pursuant to §30-29-3 of this code, governing the qualification of
65 law-enforcement officers and the entry-level law-enforcement training curricula, the Governor's
66 Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a
67 minimum of not less than six hours of training in the recognition of impairment in drivers who are
68 under the influence of controlled substances or drugs other than alcohol.

69 (3) In addition to standards promulgated by the Governor's Committee on Crime,
70 Delinquency, and Correction, pursuant to §30-29-3 of this code, establishing standards governing
71 in-service law-enforcement officer training curricula and in-service supervisory level training
72 curricula, the Governor's Committee on Crime, Delinquency, and Correction shall require the
73 satisfactory completion of a minimum of not less than six hours of training in the recognition of
74 impairment in drivers who are under the influence of controlled substances or drugs other than
75 alcohol.

76 (4) ~~That after December 31, 2014~~ A law-enforcement officer who has not satisfactorily
77 completed the minimum number of hours of training in the recognition of impairment in drivers
78 who are under the influence of controlled substances or drugs other than alcohol, required by
79 subdivisions (2) and (3) of this subsection, may ~~no longer~~ not require any person to submit to
80 secondary chemical test of his or her blood for the purposes of determining the concentration in
81 the person's body of a controlled substance, drug, or any combination thereof.

82 (j) A law-enforcement officer who has reasonable cause to believe that a person has

83 committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat,
84 jet ski, or other motorized vessel, shall follow the provisions of this section ~~in~~ when administering,
85 or causing to be administered, a preliminary breath analysis and, incidental to a lawful arrest, a
86 secondary chemical test of the accused person's blood or breath to determine the alcohol
87 concentration in his or her blood, or the concentration in the person's body of a controlled
88 substance, drug, or any combination thereof.

**§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not
withdrawn if person arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest, as specified in §17C-5-4 of this code, refuses to submit to
2 any a secondary chemical test, the ~~tests~~ test shall not be given. ~~Provided, That~~

3 ~~(b) Prior to the refusal~~ Upon requesting that a person submit to the secondary test,
4 designated pursuant to §17C-5-4 of this code, the person is shall be given an oral warning and a
5 written statement advising him or her that his or her refusal to submit to the secondary test finally
6 designated will result in the revocation of his or her license to operate a motor vehicle in this state
7 for a period of at least 45 days and up to life the written and verbal warnings set forth in
8 §17C-5-4(e) of this code. ~~After 15 minutes following the warnings the refusal is considered final.~~
9 After the person under arrest is given the required written and verbal warnings, the person shall
10 have the opportunity to submit to, or refuse to submit to, the secondary test. A refusal to submit
11 to the secondary test is considered final after 15 minutes have passed since the refusal: *Provided,*
12 That during the 15 minutes following the refusal, the arresting officers shall permit the person
13 under arrest to revoke his or her refusal and shall provide the person with the opportunity to submit
14 to the test upon request. After the 15 minutes have passed following a refusal to submit to the
15 secondary test, the arresting officer ~~after that period of time expires~~ has no further duty to provide
16 the person with an opportunity to take the secondary test.

17 (c) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner

18 of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against
19 the person pursuant to §17C-5-2 of this code, a written statement of ~~the officer~~ that: (1) He or she
20 had probable cause to believe the person had been driving a motor vehicle in this state while
21 under the influence of alcohol, controlled substances, or drugs; (2) the person was lawfully placed
22 under arrest for an offense relating to driving a motor vehicle in this state while under the influence
23 of alcohol, controlled substances, or drugs; (3) the person refused to submit to the secondary
24 chemical test ~~finally~~ designated in the manner provided in §17C-5-4 of this code; and (4) the
25 person was given a the verbal warnings and the written statement ~~advising him or her that~~
26 required by subsection (b) of this section and §17C-5-4 of this code. ~~his or her license to operate~~
27 ~~a motor vehicle in this state would be revoked for a period of at least forty-five days and up to life~~
28 ~~if he or she refused to submit to the secondary test finally designated in the manner provided in~~
29 ~~section four of this article. The~~ An officer, by signing of the statement required to be signed by
30 this ~~section~~ constitutes subsection, makes an oath or affirmation ~~by the person signing the~~
31 ~~statement that the statements~~ information contained in the statement ~~are~~ is true and that any copy
32 ~~filed of the statement that he or she files~~ is a true copy. The form for the written statement required
33 by this section shall contain, upon its face, a warning to the officer signing that to willfully sign a
34 statement containing false information ~~concerning any matter or thing, material or not material,~~ is
35 false swearing and is a misdemeanor. ~~Upon receiving the statement the commissioner shall make~~
36 ~~and enter an order revoking the person=s license to operate a motor vehicle in this state for the~~
37 ~~period prescribed by this section~~

38 ~~For the first refusal to submit to the designated secondary chemical test, the commissioner~~
39 ~~shall make and enter an order revoking the person=s license to operate a motor vehicle in this~~
40 ~~state for a period of one year or forty-five days, with an additional one year of participation in the~~
41 ~~Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section~~
42 ~~three-a, article five-a of this chapter: *Provided*, That a person revoked for driving while under the~~

43 ~~influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The~~
44 ~~application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be~~
45 ~~considered to be a waiver of the hearing provided in section two of said article. If the person=s~~
46 ~~license has previously been revoked under the provisions of this section, the commissioner shall,~~
47 ~~for the refusal to submit to the designated secondary chemical test, make and enter an order~~
48 ~~revoking the person=s license to operate a motor vehicle in this state for a period of ten years:~~
49 ~~*Provided, however,* That the license may be reissued in five years in accordance with the~~
50 ~~provisions of section three, article five-a of this chapter. If the person=s license has previously~~
51 ~~been revoked more than once under the provisions of this section, the commissioner shall, for the~~
52 ~~refusal to submit to the designated secondary chemical test, make and enter an order revoking~~
53 ~~the person=s license to operate a motor vehicle in this state for a period of life. A copy of each~~
54 ~~order shall be forwarded to the person by registered or certified mail, return receipt requested,~~
55 ~~and shall contain the reasons for the revocation and shall specify the revocation period imposed~~
56 ~~pursuant to this section. A revocation shall not become effective until ten days after receipt of the~~
57 ~~copy of the order~~

58 (d) Any person who is unconscious or who is otherwise in a condition rendering him or her
59 incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his
60 or her blood or breath as provided in §17C-5-4 of this code and the test may be administered
61 although the person is not informed that his or her failure to submit to the test will result in the
62 revocation of his or her license to operate a motor vehicle in this state for the period provided for
63 in this section. ~~A revocation under this section shall run concurrently with the period of any~~
64 ~~suspension or revocation imposed in accordance with other provisions of this code and growing~~
65 ~~out of the same incident which gave rise to the arrest for driving a motor vehicle while under the~~
66 ~~influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the~~
67 ~~test finally designated in accordance with the provisions of section four of this article.~~

68 ~~(b) For the purposes of this section, where reference is made to previous suspensions or~~
69 ~~revocations under this section, the following types of suspensions or revocations shall also be~~
70 ~~regarded as suspensions or revocations under this section:~~

71 ~~(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance~~
72 ~~of another state or a statute of the United States or of any other state of an offense which has the~~
73 ~~same elements as an offense described in section two of this article for conduct which occurred~~
74 ~~on or after June 10, 1983; and~~

75 ~~(2) Any revocation under the provisions of section one or two, article five-a of this chapter~~
76 ~~for conduct which occurred on or after June 10, 1983.~~

77 ~~(c) A person whose license to operate a motor vehicle in this state has been revoked shall~~
78 ~~be afforded an opportunity to be heard, in accordance with the provisions of section two, article~~
79 ~~five-a of this chapter.~~

80 ~~(d) The refusal to submit to a blood test may be admissible at the courts discretion in a~~
81 ~~trial for the offense of driving a motor vehicle in this state while under the influence of alcohol a~~
82 ~~controlled substance or drug or the combination of alcohol and drugs.~~

83 (e) The amendments made to this section during the 2020 regular session of the
84 Legislature shall become effective on July 1, 2020.

**§17C-5-7a. Suspension of license to operate a motor vehicle for refusal of secondary test;
refusal review hearing.**

1 (a) For the purposes of this section, the term “refusal review hearing” refers to a hearing
2 to review a person’s alleged refusal to submit to a secondary chemical test, as documented in a
3 statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code.

4 (b) Effective July 1, 2020, the court shall enter an order finding that a person charged with
5 a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test, as required
6 by §17C-5-4 of this code, subject to the following:

7 (1) At the person's first appearance before the court, the court shall advise the person that
8 his or her license to operate a motor vehicle shall be revoked for the applicable period provided
9 in subsection (e) of this section, unless the person requests a refusal review hearing within the
10 30 days following the first appearance;

11 (2) If the person does not request a refusal review hearing within 30 days following the
12 first appearance, the court shall enter an order finding that a person charged with a violation of
13 §17C-5-2 of this code did refuse to submit to a secondary chemical test; and

14 (3) If the person requests a refusal review hearing within 30 days following the first
15 appearance, the court shall conduct the review and enter the appropriate order, as provided in
16 subsection (c) of this section.

17 (c) Refusal review hearing. —

18 (1) The court shall schedule and conduct a refusal review hearing if the person, named in
19 a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7, requests
20 the hearing within 30 days following his or her first appearance before the court. During the refusal
21 review hearing, the court shall review the statement documenting the person's refusal to submit
22 to the secondary chemical test, along with any testimony or evidence presented by the person or
23 law-enforcement officer during the hearing.

24 (2) Based on the hearing, the court shall enter an order finding that the person did refuse
25 to submit to a secondary chemical test, if the court determines, by a preponderance of the
26 evidence, that:

27 (A) The arresting law-enforcement officer had reasonable grounds to believe the arrested
28 person had committed a violation of §17C-5-2 of this code;

29 (B) The law-enforcement officer requested the arrested person to submit to the chemical
30 test or tests designated pursuant to §17C-5-4 of this code;

31 (C) At the time the test was requested, the law-enforcement officer administered the

32 required written and verbal warnings required by §17C-5-4 and §17C-5-7 of this code; and

33 (D) The arrested person refused to submit to the chemical test or tests requested by the
34 law-enforcement officer.

35 (3) If the court determines, by a preponderance of the evidence, that one or more of the
36 required conditions listed in subdivision (2) of this subsection did not occur, the court shall enter
37 an order finding that the person did not refuse to submit to the secondary chemical test. If the
38 court enters such an order, the Commissioner of the Division of Motor Vehicles may not revoke
39 the person's license to operate a motor vehicle based on the alleged refusal to submit to a
40 secondary chemical test.

41 (d) The clerk of the court in which the charges are pending shall immediately transmit any
42 order entered pursuant to this section to the Commissioner of the Division of Motor Vehicles.

43 (e) Upon receipt of an order provided pursuant to this section finding that a person did
44 refuse to submit to a secondary chemical test, the Commissioner of the Division of Motor Vehicles
45 shall revoke the person's license to operate a motor vehicle as follows:

46 (1) For the first refusal to submit to the designated secondary chemical test, the
47 commissioner shall enter an order revoking the person's license to operate a motor vehicle in this
48 state for a period of one year or for a period of 45 days, with an additional one year of participation
49 in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of
50 §17C-5A-3a of this code.

51 (2) If the person's license to operate a motor vehicle has previously been revoked under
52 the provisions of this section, the commissioner shall, for the refusal to submit to the designated
53 secondary chemical test, enter an order revoking the person's license to operate a motor vehicle
54 in this state for a period of 10 years: *Provided*, That the license may be reissued in five years in
55 accordance with the provisions of §17C-5A-3 of this code.

56 (3) If the person's license to operate a motor vehicle has previously been revoked more

57 than once under the provisions of this section, the commissioner shall, for the refusal to submit to
58 the designated secondary chemical test, enter an order revoking the person's license to operate
59 a motor vehicle in this state for a period of life.

60 (f) A copy of each order entered pursuant to this section shall be forwarded to the person
61 by registered or certified mail, return receipt requested, and shall contain the reasons for any
62 revocation and shall specify the revocation period imposed pursuant to this section.

63 (g) A revocation ordered pursuant to this section shall run concurrently with the period of
64 any suspension or revocation imposed in accordance with §17C-5A-2 of this code.

§17C-5-12. Report to the Legislature.

1 On or before December 31, ~~2013~~ 2020, the Bureau for Public Health shall submit to the
2 Joint Committee on Government and Finance a report that includes the following:

3 (1) Recommendations for the minimum levels of those drugs or controlled substances
4 contained in §17C-5-8(d) of this code, that must be present in a person's blood in order for the
5 test to be admitted as prima facie evidence that the person was under the influence of a controlled
6 substance or drug in a prosecution for the offense of driving a motor vehicle in this state; and

7 (2) Recommendations for the minimum levels of those drugs or controlled substances
8 contained in §17C-5-8(d) of this code, that laboratories approved to test blood for drug or
9 controlled substance content can reliably identify and measure for the concentrations of drugs,
10 controlled substances and their metabolites, in blood.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF
ALCOHOL, CONTROLLED SUBSTANCES, OR DRUGS.**

**§17C-5A-1. ~~Implied consent to administrative procedure; revocation~~ Report to be
submitted to commissioner following arrest for driving under the influence of
alcohol, controlled substances, or drugs or refusal to submit to secondary chemical**

test; report to the court.

1 ~~(a) Any person who is licensed to operate a motor vehicle in this state and who drives a~~
2 ~~motor vehicle in this state shall be deemed to have given his or her consent by the operation~~
3 ~~thereof, subject to the provisions of this article, to the procedure set forth in this article for the~~
4 ~~determination of whether his or her license to operate a motor vehicle in this state should be~~
5 ~~revoked because he or she did drive a motor vehicle while under the influence of alcohol,~~
6 ~~controlled substances or drugs, or combined influence of alcohol or controlled substances or~~
7 ~~drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of~~
8 ~~eight hundredths of one percent or more, by weight, or did refuse to submit to any secondary~~
9 ~~chemical test required under the provisions of article five of this chapter or did drive a motor~~
10 ~~vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood~~
11 ~~of two hundredths of one percent or more, by weight, but less than eight hundredths of one~~
12 ~~percent, by weight.~~

13 (b) (a) Any law-enforcement officer investigating a person for an offense described in
14 §17C-5-2 of this code, or for an offense described in a municipal ordinance which has the same
15 elements as an offense described in said section, shall report to the Commissioner of the Division
16 of Motor Vehicles by written statement within 48 hours of the conclusion of the investigation the
17 name and address of the person believed to have committed the offense. The report shall include
18 the specific offense with which the person is charged and, if applicable, a copy of the results of
19 any secondary tests of blood, breath, or urine. The signing of the statement required to be signed
20 by this subsection constitutes an oath or affirmation by the person signing the statement that the
21 statements contained in the statement are true and that any copy filed is a true copy. The
22 statement shall contain upon its face a warning to the officer signing that to willfully sign a

23 statement containing false information concerning any matter or thing, material or not material, is
24 false swearing and is a misdemeanor.

25 ~~(c) If, upon examination of the written statement of the officer and the tests results~~
26 ~~described in subsection (b) of this section, the commissioner determines that a person committed~~
27 ~~an offense described in section two, article five of this chapter or an offense described in a~~
28 ~~municipal ordinance which has the same elements as an offense described in said section and~~
29 ~~that the results of any secondary test or tests indicate that at the time the test or tests were~~
30 ~~administered the person had, in his or her blood, an alcohol concentration of eight hundredths of~~
31 ~~one percent or more, by weight, or at the time the person committed the offense he or she was~~
32 ~~under the influence of alcohol, controlled substances or drugs, the commissioner shall make and~~
33 ~~enter an order revoking or suspending the person's license to operate a motor vehicle in this state.~~
34 ~~If the results of the tests indicate that at the time the test or tests were administered the person~~
35 ~~was under the age of twenty one years and had an alcohol concentration in his or her blood of~~
36 ~~two hundredths of one percent or more, by weight, but less than eight hundredths of one percent,~~
37 ~~by weight, the commissioner shall make and enter an order suspending the person's license to~~
38 ~~operate a motor vehicle in this state. A copy of the order shall be forwarded to the person by~~
39 ~~registered or certified mail, return receipt requested, and shall contain the reasons for the~~
40 ~~revocation or suspension and describe the applicable revocation or suspension periods provided~~
41 ~~in section two of this article. A revocation or suspension shall not become effective until ten days~~
42 ~~after receipt of a copy of the order.~~

43 ~~(d) Any law enforcement officer taking a child into custody under the provisions of section~~
44 ~~six a, article five of this chapter who has reasonable cause to believe that the child, at the time of~~
45 ~~driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of~~

46 ~~one percent or more, by weight, or that the act of the child in driving the motor vehicle was such~~
47 ~~that it would provide grounds for arrest for an offense defined under the provisions of section two~~
48 ~~of said article if the child were an adult, shall report to the Commissioner of the Division of Motor~~
49 ~~Vehicles by written statement within forty-eight hours the name and address of the child.~~

50 ~~(e) If applicable, the report shall include a description of the specific offense with which~~
51 ~~the child could have been charged if the child were an adult and a copy of the results of any~~
52 ~~secondary tests of blood, breath or urine. The signing of the statement required to be signed by~~
53 ~~this subsection constitutes an oath or affirmation by the person signing the statement that the~~
54 ~~statements contained in the statement are true and that any copy filed is a true copy. The~~
55 ~~statement shall contain upon its face a warning to the officer signing that to willfully sign a~~
56 ~~statement containing false information concerning any matter or thing, material or not material, is~~
57 ~~false swearing and is a misdemeanor.~~

58 ~~(f) Upon examination of the written statement of the officer and any test results described~~
59 ~~in subsection (d) of this section, if the commissioner determines that the results of the test indicate~~
60 ~~that at the time the test or tests were administered the child had, in his or her blood, an alcohol~~
61 ~~concentration of two hundredths of one percent or more, by weight, but also determines that the~~
62 ~~act of the child in driving the motor vehicle was not such that it would provide grounds for arrest~~
63 ~~for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (h), section~~
64 ~~two, article five of this chapter if the child were an adult, the commissioner shall make and enter~~
65 ~~an order suspending the child's license to operate a motor vehicle in this state. If the commissioner~~
66 ~~determines that the act of the child in driving the motor vehicle was such that it would provide~~
67 ~~grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e),~~
68 ~~(f), (g) or (h), section two, article five of this chapter if the child were an adult, the commissioner~~

69 ~~shall make and enter an order revoking the child's license to operate a motor vehicle in this state.~~
70 ~~A copy of the order shall be forwarded to the child by registered or certified mail, return receipt~~
71 ~~requested, and shall contain the reasons for the suspension or revocation and describe the~~
72 ~~applicable suspension or revocation periods provided for in section two of this article. A~~
73 ~~suspension or revocation shall not become effective until ten days after receipt of a copy of the~~
74 ~~order.~~

75 (b) After receiving the report required by subsection (a) of this section, the Commissioner
76 of the Division of Motor Vehicles shall immediately submit, to the court with jurisdiction over the
77 criminal offense, a full and complete record of the following:

78 (1) Any prior suspensions or revocations of the person's license to operate a motor vehicle
79 under §17C-5-2, §17C-5-2b, or §17C-5-7a of this code; or

80 (2) Any conviction or term of conditional probation imposed under a municipal ordinance
81 of this state or any other state or a statute of the United States or of any other state of an offense
82 which has the same elements as an offense described in §17C-5-2 of this code.

83 (c) The amendments made to this section during the 2020 regular session of the
84 Legislature shall become effective on July 1, 2020.

**§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol,
controlled substances, or drugs.**

1 ~~(a) If a person has a term of conditional probation imposed pursuant to §17C-5-2b of this~~
2 ~~code, or is convicted for an offense defined in §17C-5-2 of this code, or for an offense described~~
3 ~~in a municipal ordinance which has the same elements as an offense described in said section~~
4 ~~because the person did drive a motor vehicle while under the influence of alcohol, controlled~~
5 ~~substances, or drugs, or the combined influence of alcohol, or controlled substances, or drugs, or~~

6 ~~did drive a motor vehicle while having an alcohol concentration in his or her blood of eight~~
7 ~~hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of~~
8 ~~21 years with an alcohol concentration in his or her blood of two hundredths of one percent or~~
9 ~~more, by weight, but less than eight hundredths of one percent, by weight, and if the person does~~
10 ~~not act to appeal the conviction within the time periods described in subsection (b) of this section,~~
11 ~~the person's license to operate a motor vehicle in this state shall be revoked or suspended in~~
12 ~~accordance with the provisions of this section.~~

13 (a) The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's
14 license to operate a motor vehicle in any of the following circumstances:

15 (1) The person is convicted of an offense defined in §17C-5-2 of this code, which requires
16 a minimum period of revocation or suspension of the person's license to operate a motor vehicle,
17 and the person does not appeal the conviction;

18 (2) The person is convicted of an offense described in a municipal ordinance which has
19 the same elements as an offense defined in §17C-5-2 of this code, which requires a minimum
20 period of revocation or suspension of the person's license to operate a motor vehicle for the
21 offense with the same elements as the municipal ordinance, and the person does not appeal the
22 conviction;

23 (3) The person has a term of conditional probation imposed pursuant to §17C-5-2b of this
24 code;

25 (4) A court enters an order, pursuant to §17C-5-7a of this code, finding that the person did
26 refuse to submit to a secondary chemical test; or

27 (5) The person is convicted of an offense, as provided in subdivision (1) or (2) of this
28 subsection, the person appeals the conviction, and the conviction is affirmed by the highest

29 appellate court in which an appeal in the matter is filed.

30 (b) The clerk of the court ~~in which a person has had~~ that has jurisdiction over a term of
31 conditional probation or a conviction described in subsection (a) of this section ~~imposed pursuant~~
32 ~~to §17C-5-2b of this code, or is convicted for an offense described in §17C-5-2 of this code or for~~
33 ~~an offense described in a municipal ordinance which has the same elements as an offense~~
34 ~~described in said section~~ shall forward to the Commissioner of the Division of Motor Vehicles a
35 transcript the order imposing conditional probation or of the judgment of conviction and any
36 related transcripts. If the conviction is the judgment of a magistrate court, the magistrate court
37 clerk shall forward the order and any related transcript when the person convicted has not
38 ~~requested an~~ filed a notice of appeal within 20 days of the sentencing for such conviction. If the
39 term of conditional probation is the act of a magistrate court, the magistrate court clerk shall
40 forward the order and any related transcript when the order imposing the term of conditional
41 probation is entered. If the conviction is the judgment of a mayor or police court judge or municipal
42 court judge, the clerk or recorder shall forward the order and any related transcript when the
43 person convicted has not ~~perfected an~~ filed a notice of appeal within 10 days from and after the
44 date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the
45 circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent
46 to file a petition for appeal or writ of error within 30 days after the judgment was entered.

47 (c) ~~If, upon examination of the transcript of the judgment of conviction or imposition of a~~
48 ~~term of conditional probation pursuant to §17C-5-2b of this code the Commissioner determines~~
49 ~~that the person was convicted for an offense described in §17C-5-2 of this code or had a period~~
50 ~~of conditional probation imposed pursuant to §17C-5-2b of this code, or for an offense described~~
51 ~~in a municipal ordinance which has the same elements as an offense described in said section~~

52 ~~because the person did drive a motor vehicle while under the influence of alcohol, controlled~~
53 ~~substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or~~
54 ~~did drive a motor vehicle while having an alcohol concentration in his or her blood of eight~~
55 ~~hundredths of one percent or more, by weight~~ Upon receipt of an order of the court, as described
56 in subsection (b) of this section, the commissioner shall make and enter an order revoking or
57 suspending the person's license to operate a motor vehicle in this state as required by §17C-5-2,
58 §17C-5-2b, or §17C-5-7a of this code. ~~If the commissioner determines that the person was~~
59 ~~convicted of driving a motor vehicle while under the age of 21 years with an alcohol concentration~~
60 ~~in his or her blood of two hundredths of one percent or more, by weight, but less than eight~~
61 ~~hundredths of one percent, by weight, the commissioner shall make and enter an order~~
62 ~~suspending the person's license to operate a motor vehicle in this state. The order~~ of the
63 commissioner, revoking or suspending the license, shall contain the reasons for the revocation or
64 suspension and the statutorily mandated ~~revocation or suspension periods provided for in said~~
65 ~~section~~ period for the offense or the suspension period required as a condition of probation.
66 ~~Further, the order shall give the procedures for requesting a hearing, which is to be held in~~
67 ~~accordance with the provisions of said section. The person shall be advised in the order that~~
68 ~~because of the receipt of a transcript of the judgment of conviction by the commissioner a~~
69 ~~presumption exists that the person named in the transcript of the judgment of conviction is the~~
70 ~~person named in the commissioner's order and such constitutes sufficient evidence to support~~
71 ~~revocation or suspension and that the sole purpose for the hearing held under this section is for~~
72 ~~the person requesting the hearing to present evidence that he or she is not the person named in~~
73 ~~the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person~~
74 ~~by registered or certified mail, return receipt requested. No revocation or suspension shall become~~

75 ~~effective until ten days after receipt of a copy of the order~~

76 ~~(d) The provisions of this section shall not apply if an order reinstating the operator's~~
77 ~~license of the person has been entered by the commissioner prior to the receipt of the transcript~~
78 ~~of the judgment of conviction~~

79 (d) If a person receives an order of the commissioner suspending or revoking his or her
80 license, as provided in subsection (c) of this section, and the person believes that he or she is not
81 the person named in the commissioner's order, the person may notify the commissioner of the
82 alleged error in writing. Upon receipt of this notification, the commissioner shall immediately
83 review the contents of the judgment of conviction and the information provided by the person in
84 question to determine whether or not the alleged error has been made. If the commissioner
85 determines that the alleged error has been made, the commissioner shall: (1) Immediately reverse
86 the suspension or revocation made in error; and (2) take all necessary steps to correctly identify
87 the person who should have been named in the order and suspend or revoke the license of the
88 correctly identified person, as required by this section.

89 ~~(e) For the purposes of this section, a person is convicted when the person enters a plea~~
90 ~~of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction~~
91 ~~for purposes of this section except where the person holds a commercial drivers license or~~
92 ~~operates a commercial vehicle.~~

§17C-5A-2b. Administrative hearing, revocation, and review process terminated on July 1, 2020.

1 Notwithstanding any other provision of this code:

2 (1) The provisions of §17C-5A-2 of this code apply only to proceedings arising from
3 offenses occurring on or before June 30, 2020; and

4 (2) The provisions of §17C-5A-2 of this code have no force or effect beginning on the date
5 when the Office of Administrative Hearings terminates, pursuant to §17C-5C-1a of this code.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The Division of Motor Vehicles shall administer a comprehensive safety and treatment
2 program for persons whose licenses have been suspended or revoked under the provisions of
3 ~~this article, or §17C-5-7 or §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a~~ of this code and shall
4 also establish the minimum qualifications for mental health facilities, day report centers,
5 community corrections centers, or other public agencies or private entities conducting the safety
6 and treatment program: *Provided*, That the Division of Motor Vehicles may establish standards
7 whereby the division will accept or approve participation by violators in another treatment program
8 which provides the same or substantially similar benefits as the safety and treatment program
9 established pursuant to this section.

10 (b) The program shall include, but not be limited to, treatment of alcoholism, treatment of
11 alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol
12 and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other
13 programs designed to properly educate, train, and rehabilitate the offender: *Provided*, That
14 successful compliance with the substance abuse and counseling program prescribed in
15 §61-11-26a of this code is sufficient to meet the requirements of this section.

16 (c) The Division of Motor Vehicles shall provide for the preparation of an educational and
17 treatment program for each person whose license has been revoked under the provisions of ~~this~~
18 ~~article, or §17C-5-7 or §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a~~ of this code, which shall
19 contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) the
20 characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation
21 through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation

22 and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by
23 persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

24 (d) ~~There is hereby created~~ A special revenue account is created within the State
25 Treasury, known as the Division of Motor Vehicles Safety and Treatment Fund. ~~The account shall~~
26 ~~be administered by~~ The Commissioner of the Division of Motor Vehicles shall manage and expend
27 moneys from the account for the purpose of administering the comprehensive safety and
28 treatment program established by subsection (a) of this section. The moneys in the account may
29 be invested and all earnings and interest accruing shall be retained in the account. The Auditor
30 shall conduct an audit of the ~~fund~~ account at least every three fiscal years.

31 ~~Effective July 1, 2019, all moneys held in the Department of Health and Human Resources~~
32 ~~Safety and Treatment Fund shall be transferred to the Division of Motor Vehicles Safety and~~
33 ~~Treatment Fund.~~

34 (e) (1) The program provider shall collect the established fee from each participant upon
35 enrollment unless the division has determined that the participant is an indigent based upon
36 criteria established pursuant to legislative rule authorized in this section.

37 (2) If the division determined that a participant is an indigent based upon criteria
38 established pursuant to the legislative rule authorized by this section, the department shall provide
39 the ~~applicant~~ participant with proof of its determination regarding indigency, which proof the
40 ~~applicant~~ participant shall present to the interlock provider as part of the application process
41 provided in §17C-5A-3a of this code ~~and/or~~ and the rules promulgated pursuant thereto.

42 (3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee
43 collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into
44 the Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall
45 reimburse enrollment fees to program providers for each eligible indigent offender.

46 (f) On or before January 15 of each year, the Commissioner of the Division of Motor
47 Vehicles shall report to the Legislature on:

48 (1) The total number of offenders participating in the safety and treatment program during
49 the prior year;

50 (2) The total number of indigent offenders participating in the safety and treatment
51 program during the prior year;

52 (3) The total number of program providers during the prior year; and

53 (4) The total amount of reimbursements paid to program providers during the prior year.

54 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to
55 the program developed for the offender, shall prescribe the necessary terms and conditions for
56 the reissuance of the license to operate a motor vehicle in this state revoked under ~~this article, or~~
57 ~~§17C-5-7 or §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a~~ of this code which shall include
58 successful completion of the educational, treatment, or rehabilitation program, subject to the
59 following:

60 (1) When the period of revocation is six months, the license to operate a motor vehicle in
61 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial
62 revocation, during which time the revocation was actually in effect; (B) the offender has
63 successfully completed the program; (C) all costs of the program and administration have been
64 paid; and (D) all court costs assessed as a result of ~~a revocation hearing~~ criminal proceedings
65 have been paid.

66 (2) When the period of revocation is for a period of one year or for more than a year, the
67 license to operate a motor vehicle in this state may not be reissued until: (A) At least one half of
68 the time period has elapsed from the date of the initial revocation, during which time the revocation
69 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of
70 the program and administration have been paid; and (D) all court costs assessed as a result of a

71 ~~revocation hearing~~ criminal proceedings have been paid. Notwithstanding any provision in this
72 code, a person whose license is revoked for refusing to take a chemical test as required by
73 ~~§17C-5-7~~ §17C-5-4 of this code for a first offense is not eligible to reduce the revocation period
74 by completing the safety and treatment program.

75 (3) When the period of revocation is for life, the license to operate a motor vehicle in this
76 state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial
77 revocation, during which time the revocation was actually in effect; (B) the offender has
78 successfully completed the program; (C) all costs of the program and administration have been
79 paid; and (D) all court costs assessed as a result of a ~~revocation hearing~~ criminal proceeding
80 have been paid.

81 (4) Notwithstanding any provision of this code or any rule, any mental health facilities or
82 other public agencies or private entities conducting the safety and treatment program, when
83 certifying that a person has successfully completed a safety and treatment program, shall only
84 have to certify that the person has successfully completed the program.

85 (h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational
86 program for each person whose license has been suspended for 60 days pursuant to ~~the~~
87 ~~provisions of §17C-5A-2(n)~~ §17C-5-2(j) of this code. The educational program shall consist of not
88 less than 12 nor more than 18 hours of actual classroom time.

89 (2) When a 60-day period of suspension has been ordered, the license to operate a motor
90 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial
91 suspension, during which time the suspension was in effect; (B) the offender has successfully
92 completed the educational program; (C) all costs of the program and administration have been
93 paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

94 (i) ~~A required component of the treatment program provided in~~ As a component of the
95 programs required by subsection (b) of this section and the education program provided for in

96 ~~subsection (e)~~ subsections (b) and (c) of this section, ~~shall be participation by the violator with a~~
97 the offender shall attend a victim impact panel program. ~~Providing~~ The victim impact panel
98 program must provide a forum for victims of alcohol and drug-related offenses and offenders to
99 share first-hand experiences on the impact of alcohol and drug-related offenses in their lives. The
100 Division of Motor Vehicles shall propose and implement a plan for victim impact panels where
101 appropriate numbers of victims are available and willing to participate and shall establish
102 guidelines for other innovative programs which may be substituted where the victims are not
103 available to ~~assist persons whose licenses have been suspended or revoked for alcohol and~~
104 ~~drug-related offenses to gain a full understanding of the severity of their offenses in terms of the~~
105 ~~impact of the offenses on victims and offenders~~ participate in an impact panel. The plan shall
106 require, at a minimum, discussion and consideration of the following:

- 107 (1) Economic losses suffered by victims ~~or~~ and offenders;
- 108 (2) Death or physical injuries suffered by victims ~~or~~ and offenders;
- 109 (3) Psychological injuries suffered by victims ~~or~~ and offenders;
- 110 (4) Changes in the personal welfare or familial relationships of victims ~~or~~ and offenders;
- 111 and
- 112 (5) Other information relating to the impact of alcohol and drug-related offenses upon
113 victims ~~or~~ and offenders.

114 The Division of Motor Vehicles shall ensure that any meetings between victims and
115 offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

116 (j)~~(4)~~ The Commissioner of the Division of Motor Vehicles shall ~~promulgate~~ propose a rule
117 for legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the
118 provisions of this section and establish a fee to be collected from each offender enrolled in the
119 safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program
120 providers of required fees for the safety and treatment program for indigent offenders, criteria for

121 determining eligibility of indigent offenders, and any necessary application forms; and (B) program
122 standards that encompass provider criteria including minimum professional training requirements
123 for providers, curriculum approval, minimum course length requirements, and other items that
124 may be necessary to properly implement the provisions of this section.

125 ~~(2) The Legislature finds that an emergency exists and, therefore, the commissioner shall~~
126 ~~file by July 1, 2019, an emergency rule to implement this section pursuant to the provisions of~~
127 ~~§29A-3-15 of this code.~~

128 (k) ~~Nothing in this section may be construed to prohibit~~ A day report or community
129 corrections ~~programs~~ program, authorized pursuant to §62-11C-1 *et seq.* of this code, ~~from~~
130 ~~administering a~~ may provide the comprehensive safety and treatment program pursuant to this
131 section.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-1a. Termination of Office of Administrative Hearings; transfer of jurisdiction.

1 (a) The Office of Administrative Hearings shall retain jurisdiction over appeals described
2 in §17C-5C-3(3) of this code arising from offenses occurring on or before June 30, 2020. The
3 Office of Administrative Hearings has no jurisdiction over appeals described in said subdivision
4 arising from offenses occurring on or after July 1, 2020.

5 (b) Beginning on July 1, 2020, jurisdiction over appeals described in §17C-5C-3 of this
6 code, except for those described in §17C-5C-3(3) of this code, shall be transferred to the circuit
7 court for the circuit in which the event giving rise to the contested decision of the Commissioner
8 of the Division of Motor Vehicles occurred.

9 (c) The Office of Administrative Hearings shall, in an orderly and efficient manner, dispose
10 of all matters pending before it, subject to the following:

11 (1) If any appeal of a revocation or suspension order, described in §17C-5C-3(3) of this
12 code, is pending before the office on or after July 1, 2021, the underlying revocation or suspension

13 order shall be dismissed.

14 (2) If any appeal described in §17C-5C-3 of this code, except for an appeal described in
15 §17C-5C-3(3) of this code, is pending before the Office of Administrative Hearings on or after July
16 1, 2021, the appeal shall be transferred to the circuit court described in subsection (b) of this
17 section. For any appeal transferred pursuant to this subdivision, the circuit court shall adopt any
18 existing records of evidence and proceedings in the Office of Administrative Hearings, conduct
19 further proceedings as it considers necessary, and issue a final decision or otherwise dispose of
20 the case pursuant to the provisions governing the judicial review of contested administrative cases
21 in §29A-5-1 et seq. of this code.

22 (d) Upon resolution of all matters pending before the Office of Administrative Hearings or
23 on July 1, 2021, whichever occurs earlier, the Office of Administrative Hearings shall be
24 terminated.

25 (e) The Secretary of the Department of Transportation may establish interim policies and
26 procedures to aid in the orderly and efficient process during the disposition of remaining cases
27 before the Office of Administrative Hearings during the phase-out period until termination.

NOTE: The purpose of this bill is to revise procedures for drivers' license suspensions and revocations for driving under the influence of alcohol, controlled substances or drugs.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.